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To: DDTCResponseTeam@state.gov
From: William A. Root

Subject: Proposed Rule to Amend 22 CFR 121.1 Category VIII(b) and (h) to Take into Consideration EAA Section 17(c) (73 FR 19780 April 11, 2008)

The following features of the proposed rule are inconsistent with EAA Section 17(c)(1), which provides that any product is to be subject "exclusively" to EAA rather than AECA export controls "which is standard equipment, certified by the Federal Aviation Administration, in civil aircraft and is an integral part of such aircraft":

1. **Requiring an ITAR commodity jurisdiction review for hot section components and digital engine controls** (amendment to Category VIII(b)) - This would explicitly put under AECA jurisdiction "all specifically designed military hot section components ... and digital engine controls ... ." The purpose of 17(c) was to clarify EAA jurisdiction for products meeting its terms even if they might have been specifically designed for a military application. The Supplementary Information in the notice of proposed rule states that no CJ would be required for non-SME items unless doubt exists as to whether criteria for exclusion from the USML have been met. Accordingly, the only purpose of the amendment to VIII(b) would be to require a CJ in instances where there was no doubt that the criteria for USML exclusion have been met. The Supplementary Information states that the items identified in the change to VIII(b) have been heretofore controlled under Category VIII(h). However, many of these items have, for decades, been explicitly controlled under the EAR (see ECCNs 9A003, 9D003, and 9E003 on the CCL).

2. **Stating Commerce jurisdiction as "any part or component ... designed exclusively for civil, non-military aircraft ... and civil non-military aircraft engines"** (Note 1st sentence) - No FAA certification would be required to determine Commerce jurisdiction for such parts or components. 17(c) was needed to clarify jurisdiction for parts and components for which there were both civil and military features.

3. **Requiring a CJ for any SME part or component unless it was integral to civil aircraft prior to the rule's effective date** (Note 2nd, 3rd, and 4th sentences) - 17(c) does not distinguish between SME and non-SME nor between integration before and after a specified date.

4. **Stating that the 17(c) criteria for Commerce jurisdiction do not apply if the item is controlled by a USML Category other than VIII** (Note 2nd and 6th sentences) - 17(c) is not limited in this way. It states, "Any such product shall not be subject to (AECA) controls." Many aircraft parts and components are described in USML Categories other than VIII, such as electronic and control in Categories XI and XII.

5. **Limiting applicable FAA certificates "for a civil, non-military aircraft (this expressly excludes military aircraft certified as restricted and any type certification of Military Commercial Derivative Aircraft)"** (Note 2nd sentence) - The FAA certification condition applies to the product and not to the aircraft. The Supplementary Information states, "... some exporters have mistakenly believed this provision applied to complete aircraft." FAA Order 8110.101 defines Military Commercial Derivative Aircraft as civil aircraft procured by the military. 17(c) applies to equipment in civil aircraft, with no disqualification for any subset of civil aircraft.

6. **Limiting "standard equipment" to what is established and published in industry or government specifications or unpublished civil aviation industry specifications and standards** (Note 10th and 11th sentences) - 17(c) is not so limited. Many FAA certified parts and components commonly used in civil aircraft do not meet this definition (*e.g.*, those with specifications which a manufacturer rather than the industry or the government adopts or which are not unique to civil aviation.

7. **Excluding from "standard equipment" "if there are any performance, manufacturing or testing requirements beyond such specifications and standards**" (Note 12th sentence) - 17(c) makes no such exclusion. It would be irrational to exclude modifications of no military significance.

8. **Requiring that a civil aircraft part or component be designed or modified (not just tested) to meet a military specification in order to change its jurisdiction** (Note 13th sentence) - 17(c) does not exclude from "standard equipment" items which meet military specifications for which there is no equivalent civil specification. Military specifications are commonly used as civil aircraft standards.

9. **Requiring that a part or component be installed in the aircraft** (Note 14th sentence) - The 17(c) requirement that a part be an "integral" part of a civil aircraft does not exclude a spare part from the intended meaning of "integral."

10. **Disqualifying a "part approved solely on a non-interference/provisions basis under a type certificate issued by the Federal Aviation Administration"** (Note 16th sentence) - 17(c) is not limited by the type of FAA certification.

11. **Disqualifying "unique application parts or components not integral to the aircraft"** (Note 17th sentence) - 17(c) does not exclude "unique" parts or components. The word "unique" is meaningless without stating the purpose for which it is unique. It would be unreasonable to disqualify items unique to a particular type of civil aircraft. It would be unlikely that FAA would certify an item used uniquely for military applications.